

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2191 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE K.M.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MAHESH RATILAL MODI, HEIR OF DECD.VARSHABEN M MODI
Versus

ANANDBEN INDRAJITSINH CHAUHAN

Appearance:

MR RC JANI for Petitioner

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.M.MEHTA

Date of decision: 10/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The sole question which has been raised by the

appellant-original opponent No. 1, is with regard to liability of payment of penalty payable under the Workmen Compensation Act, 1923, (hereinafter referred to as 'the Act') for late depositing the amount of compensation due and payable on happening of employment injuries to the employee.

2. It may be mentioned, at the outset, that the scope of appeal under Section 30 of the Act, is very much circumscribed. An appeal is competent against the order of Commissioner for Workmen Compensation on a substantial question of law. The question raised in this appeal by the employer is with regard to his right to be reimbursed from the insurer- respondent No. 3, National Insurance Company, for the payment of penalty. The Commissioner for Workmen Compensation has, only, directed the employer and not the insurer for payment of penalty which is challenged before us. It is settled proposition of law that the Insurance Company cannot be fastened with the liability for the payment of penalty on account of default committed by the employer in paying the compensation due under the Act within one month from the date it becomes payable.

3. Section 4A of the Act provides for compensation to be paid when due and payable and penalty for default. The amount of compensation in terms of Section 4 of the Act is required to be deposited or paid by the employer within the stipulated statutory time period. The Commissioner for Workmen Compensation is, also, empowered to award penalty to the workmen against the employer for committing default in payment of compensation within that time. This is very clear from the provisions of Section 4A(3). It is, therefore, competent for the Commissioner for Workmen Compensation to direct the employer, in addition to the amount of arrears of compensation, to direct the employer to pay simple interest thereon at the rate of 12% per annum or at such higher rate not exceeding maximum of the lending rate of any Scheduled bank as may be specified by the appropriate Notification in view of Section 4A(3)(a). Whereas clause (b) of the same Section provides that the Commissioner for Workmen's Compensation is, also, empowered to award penalty which shall not exceed 50% of the amount in default.

4. The liability for penalty is fastened on the employer in case of his default in making the payment of compensation due and payable to the injured workmen arising out of employment accident in terms of Section 4 of the Act. Therefore, the liability for payment of penalty arises on account of default committed by the

employer. Such a liability cannot be subject to indemnification and shifted to the insurer in view of the settled proposition of law. The word "penalty" imposed in Section 4A(3)(b) of the Act is suggestive of the fact that what is sought to be recovered is the amount of penalty arising on account of indifference or apathy or default committed by the employer. The award of penalty is a culmination of an action of penal nature. It would not, therefore, be fastened or shifted on the insurer. This High Court has taken this view which is confirmed by the Hon'ble apex court in a decision rendered in the case of M/S. HINDUSTAN STEEL LTD. VS. STATE OF ORISSA reported in AIR 1970 SC 253 in which at para 7 on page 256 it is observed as follows:-

"....But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An Order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

In view of the aforesaid facts and circumstances and settled proposition of law, this appeal merits dismissal at the threshold. Accordingly, it is dismissed being meritless. The penalty shall be credited to the State Government.

In view of the order in the main matter, no orders are passed on the Civil Application.

00000

(pkn)